

**TENNESSEE BOARD OF PHARMACY
JULY 14 – 15, 2004
ROOM 160 – DAVY CROCKETT TOWER
NASHVILLE, TN**

BOARD MEMBERS PRESENT:

Robert Shutt, President
Reggie Dilliard, Vice President
Julie Frazier, Member
Sheila Mitchell, Member
James R. Mitchell, Member
Monica Franklin, Public Member
Forrest Parmley, Member

STAFF PRESENT:

Kendall Lynch, Director
Alison Zane, Legal Counsel
Martha Agee, Board Administrator
Terrence Cannada, Pharmacist Investigator
Harry Fuqua, Pharmacist Investigator
Terry Grinder, Pharmacist Investigator
Richard Hadden, Pharmacist Investigator
Ralph Staton, Pharmacist Investigator

The Tennessee Board of Pharmacy convened on Wednesday, July 14, 2004, in Room 160 of the Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee. A quorum of the members being present, the meeting was called to order at 9:00 a.m. CDT by Dr. Robert Shutt, President.

Director, Kendall Lynch introduced three (3) interns, one (1) from the University of Tennessee College of Pharmacy and two (2) who are attending Mercer. Dr. Jennifer Palko with the Walgreen Corporation was in attendance with approximately eight or nine interns. Dr. Lynch also acknowledged eight to ten students who are participating in the Tennessee Interdisciplinary Health Program.

President Robert Shutt welcomed the attendees on behalf of the Board. Dr. Shutt acknowledged Dr. Kendall Lynch's return to work and commended Dr. Harry Fuqua for his involvement as "acting director" during Dr. Lynch's absence.

APPROVAL OF THE MINUTES

The **minutes of the May 25 - 26, 2004**, board meeting were presented and reviewed by the Board. Dr. Robert Mitchell motioned **to approve** the minutes; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

**GREGORY KIRK JONES, DPH – REQUEST FOR REINSTATEMENT OF LICENSE
KINGSPORT, TN**

Dr. Kirk Jones appeared before the Board to request the reinstatement of his pharmacist license along with advocate Dr. Kenny Archer, with the Tennessee Pharmacists Recovery Network. Director Kendall Lynch stated Dr. Jones was disciplined in November, 1996 for chemical dependency and the license was reinstated with a term of probation for five (5) years. In November, 1998, the Board granted Dr. Jones' request for a modification of his Consent Order to allow him to be the pharmacist-in-charge. In January, 2004, Dr. Jones relapsed and entered Cornerstone Recovery and surrendered his license. Dr. Jones attended a five (5) week program on an in-patient basis and then to a half-way house. Dr. Jones was discharged in April, 2004. Dr. Jones stated he is attending meetings regularly and having a structured environment helps to stay sober. Dr. Kenny Archer stated Dr. Kirk Jones was compliant with TPRN recommendations. Dr. Jones stated he is making restitution with his employer and Dr. Lynch stated there were no criminal charges filed. Dr. Jones receives support from his wife, children, father and friends. After board discussion, Dr. Reggie Dilliard motioned:

1. Respondent does hereby agree to the reinstatement of license number **7803** with the following probationary conditions. Said probation shall remain in effect for a period of ten (10) years, from **July 14, 2004 to July 14, 2014.**

- (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
- (b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, Mack Hicks, MD, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;

- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;
- (g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;

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(h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a “floater” for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;

(i) If the license has been inactive, delinquent, suspended or revoked:

(i) **Less than one (1) year, the pharmacist shall:**

- I. Provide written notice requesting an active license;
- II. Satisfy all past due continuing pharmaceutical education; and
- III. Pay all cumulative license renewal fees and any applicable penalties.

Dr. Julie Frazier seconded the motion. All were in favor and the motion carried.

**MARK CALLIS, DPH – REQUEST FOR REINSTATEMENT OF LICENSE
LOUISVILLE, TN**

Dr. Mark Callis appeared before the Board to request the reinstatement of his pharmacist license. Advocating on his behalf was Dr. Kenny Archer with TPRN. Director Kendall Lynch stated in the fall of 2001, Dr. Callis self-reported alcohol addiction and was admitted to treatment at Cornerstone in Knoxville, Tennessee. At the time, the license expired and the Board office agreed to leave the license in that status until the Board reconvened in January, 2002. In June, 2003, Dr. Callis relapsed on alcohol and re-entered Cornerstone. Dr. Callis’ license was placed in inactive/retired status until treatment was completed and he had obtained TRPN advocacy. Dr. Kenny Archer stated the TPRN committee had allowed Dr. Callis to work as a pharmacy technician and is complaint with the recommendations of TPRN. After board discussion, Dr. Sheila Mitchell motioned:

1. Respondent does hereby agree to the reinstatement of license number **8230** with the following probationary conditions. Said probation shall remain in effect for a period of ten (10) years, from **July 14, 2004 to July 14, 2014.**

- (a) The Respondent shall completely abstain from the consumption of alcohol or any other drugs, except as specified in (b).
- (b) The Respondent shall be able to consume legend drugs or controlled substances prescribed by the Respondent's primary physician, William Robinson, MD, except in the case of an emergency or upon a proper referral from the Respondent's primary physician. The Respondent shall immediately notify the Board office in writing of the name of the Respondent's primary physician each time the Respondent changes primary physicians;
- (c) The Respondent shall not obtain or attempt to obtain any prescriptions in the Respondent's name for any legend drugs, controlled substances or devices containing same from a physician other than the Respondent's primary physician or from any other health care provider, such as a nurse practitioner, physician's assistant or psychiatrist;
- (d) The Respondent shall destroy any unused controlled substances prescribed under the provisions of subsection (b) no later than thirty (30) days following the completion of the prescribed course of treatment;
- (e) The Respondent shall report to the Board, in writing, the ingestion of any and all legend drugs or controlled substances (a copy of the prescription will satisfy the requirement);
- (f) The Respondent shall submit to breathalyzer testing and/or random sampling of urine, blood or bodily tissues for the presence of drugs and alcohol, at the Respondent's own expense, by agents of the Board, such as the Tennessee Pharmacists Recovery Network for as long as the Respondent has an active license. In the event that the sampling indicates the presence of drugs for which the Respondent does not have a valid prescription or the sampling indicates the presence of alcohol, then formal

disciplinary charges may be brought against the Respondent which could result in the revocation of the Respondent's remaining term of probation or the suspension or revocation of the Respondent's license to engage in the practice of pharmacy. Prior to such disciplinary charges being heard by the Board, the Respondent's license may be summarily suspended;

- (g) The Respondent shall comply with all of the terms and conditions of the extended aftercare contract he or she entered into with Tennessee Pharmacists Recovery Network. Respondent shall return a copy of said contract with this Consent Order to the Board office;
- (h) The Respondent shall not serve as pharmacist-in-charge for a period of three (3) years, however, after a period of two (2) years, the Respondent may petition the Board for a modification of this Consent Order to remove the restrictions upon a show of good cause. The Respondent shall not work as a "floater" for a period of three (3) years, meaning that the Respondent shall not work at more than one (1) pharmacy location at the same time without the permission of the Board;
- (i) If the license has been inactive, delinquent, suspended or revoked:
 - (ii) **One (1) year to not more than five (5) consecutive years, the pharmacist shall:**
 - I. Provide written notice requesting an active license;
 - II. Satisfy all past due continuing pharmaceutical education;
 - III. Successfully complete the jurisprudence examination;
 - Dr. Sheila Mitchell recommended a waiver of the jurisprudence exam.**
 - II. Pay all cumulative license renewal fees and any applicable penalties;
 - III. Complete a period of pharmacy internship in Tennessee.
 - A. From one (1) year to not more than three (3) consecutive years, one hundred sixty (160) hours within ninety (90) consecutive days;

Dr. Robert Mitchell seconded the motion. There were six (6) Ayes and one (1) Nay. The motion carried.

Dr. Reggie Dilliard introduced Dr. Dan Luce, Manager of Pharmacy Affairs with the Walgreen Company, who discussed various trends in technology with the Board. Dr. Robert Shutt appreciated Dr. Luce's presentation and feels the Board should begin to look at the technology process for the future.

CONSENT ORDERS

NEWTON H. CULBERTSON, III, DPH

265 Riverbluff Drive West

Manchester, TN 37355

Legal counsel, Mrs. Alison Cleaves, presented a Consent Order for Reinstatement of License for Dr. Newton Culbertson with a probationary term of ten (10) years. Dr. Julie Frazier motioned to **accept** the Consent Order for Reinstatement; seconded by Dr. Forrest Parmley. All were in favor and the motion carried.

JAMES ALSTON OWEN, DPH

203 West Sherrod Avenue

Covington, TN 38019

Mrs. Alison Cleaves, legal counsel, presented a Consent Order for the indefinite suspension of Dr. James Owen's pharmacist license due to chemical dependency. Dr. Julie Frazier motioned to **accept** the Consent Order; seconded by Mrs. Monica Franklin.

ROBERT MCLEAN, DPH

122 Log Cabin Road

Gray, TN 37615

Legal counsel, Mrs. Alison Cleaves, presented a Consent Order for the surrender of Dr. Robert McLean's pharmacist license. Dr. McLean was disciplined in another state. Mrs. Monica Franklin motioned to **accept** the Consent Order; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

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BARBARA PORTEOUS, DPH
241 Highland Hills Drive
Gray, TN 37615

Mrs. Alison Cleaves, legal counsel, presented a Consent Order for the indefinite suspension of Dr. Barbara Porteous' pharmacist license due to chemical dependency. Dr. Julie Frazier motioned to **accept** the Consent Order; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

WILLIAM ROE, DPH
216 N. 17th
Humboldt, TN 38343

A Modified Consent Order of Probation was presented by Mrs. Alison Cleaves, legal counsel, to reinstate the pharmacist in charge provision for Dr. William Roe. Dr. Roe had entered into a Consent Order with the Board, signed and dated February 19, 2003, with a two (2) year term of probation for violation of T.C.A. § 63-10-505 (4) (5) and (6). The Board accepted the Consent Order on March 18 – 19, 2003. The Board extended the probationary term an additional two (2) years. Dr. Roe's full probationary term will be February 19, 2003 – February 19, 2007. Dr. Robert Mitchell motioned to **accept** the Modified Consent Order of Probation; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

ROGER SMITHSON, DPH
49 Fairview Lane
Woodbury, TN 37190

Mrs. Alison Cleaves, legal counsel, presented a Consent Order for the Reinstatement of Dr. Roger Smithson's pharmacist license. Mrs. Monica Franklin motioned to **accept** the Consent Order for Reinstatement; seconded by Dr. Reggie Dilliard. All were in favor and the motion carried.

JENNIFER SPIVEY, DPH
380 Holly Hills Lane
McKenzie, TN 38201

Legal counsel, Mrs. Alison Cleaves, presented a Consent Order for the Reinstatement of Dr. Jennifer Spivey's pharmacist license with a probationary term of five (5) years. Dr. Robert Mitchell motioned to

accept the Consent Order for Reinstatement; seconded by Dr. Julie Frazier. All were in favor and the motion carried

MATTHEW STEVEN WALL, DPH
109 Dominion Drive
Burns, TN 37029

A Consent Order for the surrender of Dr. Matthew Steven Wall's pharmacist license, due to chemical dependency, was presented by counsel, Mrs. Alison Cleaves. Dr. Sheila Mitchell motioned to **accept** the Consent Order; seconded by Mrs. Monica Franklin. Dr. Julie Frazier recused herself. The motion carried.

WAIVERS

PHILLIP W. BRADLEY, DPH
BRADLEY DRUG CO.
5208 Charlotte Avenue
Nashville, TN 37209

Dr. Phillip Bradley is requesting a waiver of Rule 1140-3-.14 (12) relevant to the pharmacist-in-charge provision at more than (1) pharmacy practice site. Dr. Phillip Bradley is currently the PIC at Bradley Drug Company. Bradley Extended Care, a long term care facility, is located at the same building. Dr. Sheila Mitchell motioned to **accept** the PIC waiver request; seconded by Dr. Robert Mitchell. Dr. Julie Frazier expressed concerns relevant to the controlled substance inventory, volume, and recordkeeping duties for these facilities. All were in favor and the motion carried.

TERRY HOLLAND, DPH
PROFESSIONAL ARTS PHARMACY
5655 Frist Boulevard
Hermitage, TN 37076

Dr. Terry Holland is requesting a waiver of Rule 1140-3-.14 (12) regarding the pharmacist-in-charge provision at more than (1) pharmacy practice site. Dr. Holland is currently the PIC at Professional Arts Pharmacy and is in the process of opening a compounding pharmacy, Professional Arts Compounding Center, which will be located adjacent to the existing retail pharmacy. Both pharmacies

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will operate from 9:00 a.m. to 6:00 p.m. Monday through Friday; closing for lunch from 1:00 – 2:00 p.m. and closed on weekends unless an emergency occurs. Dr. Sheila Mitchell motioned to **grant** the request; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

BENJAMIN PEGRAM, DPH
1977 Commons Way NE
Kalkaska, MI 49646

Dr. Benjamin Pegram is requesting a waiver of Rule 1140-1-.07 (3) (a) (2) relevant to the ACPE Live continuing education hours required to reinstate his pharmacist license for a period of less than one (1) year. Dr. Julie Frazier motioned to **grant a six month extension** in which to obtain the ACPE Live CE's, which cannot be used for the next renewal cycle. Dr. Robert Mitchell seconded the motion. All were in favor and the motion carried.

JACK C. RITCHIE, JR., DPH
2715 Barrow Drive
Merritt Island, FL 32952

Dr. Jack Ritchie is requesting a waiver of Rule 1140-1-.07 (3) (c) (3) relevant to successfully completing the NAPLEX for licensees whose license has been expired for a period longer than five (5) years. Dr. Ritchie's license expired in December, 1996 and was not notified of the rule changes in 1998. Dr. Reggie Dilliard motioned to **approve the waiver of the NAPLEX**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

AMANDA BRADBURY, DPH
112 Park Place Circle
Alabaster, AL 35007

Dr. Amanda Bradbury is requesting a waiver of Rule 1140-1-.07 (3) (b) (3) relevant to the Jurisprudence exam for licensees whose license has been in inactive/retired status for a period greater than one (1) year. Dr. Bradbury had requested inactive/retired status on May 22, 2003 and requested reactivation on June 15, 2004. Dr. Reggie Dilliard motioned to **approve** the waiver; seconded by Dr. Julie Frazier. There were six (6) Ayes and one (1) Nay. The motion carried.

LEGAL REPORT/COMPLAINTS

1. Case No.: L03-PHR-RBS-2003163211

The complaint was initiated from our investigator's inspection of the pharmacy. In August, 2003, the investigator noted that 17 out of 80 Baker cells had incorrect expiration dates on them and 3 Baker cells did not contain any identifying data. We received a note from the PIC dated April 21, 2004 stating that the problem had been corrected. On April 2, 2004, the investigator went to the pharmacy to confirm this and found that 2 Baker cells had labels indicating that the product was expired and he also found 18 out-of-date drugs on the shelves.

*Previous complaints: DPh: (2003, working on expired license, \$400.00 civil penalty)
Pharmacy: (2003, working on expired license, \$400.00 civil penalty)*

Recommendation: Consent Order with a \$500.00 civil penalty to the PIC

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Julie Frazier. There were six (6) Ayes and one (1) Nay. The motion carried.

2. Case No.: L04-PHR-RBS-2004178651

The Complainant is the parent of a 3 month old child who alleges that a prescription for Zantac was erroneously filled with Zyrtec. A single 0.5ml dose of Zyrtec was administered resulting in the child sleeping and spitting up. The DPh admitted the error and corrected the mistake. The DPh also stated that in order to avoid mistakes like this in the future, liquid Zantac and liquid Zyrtec are now on separate stock shelves.

Previous complaints: DPh: (1/2002, refilled Rx that was not ordered, dismiss; 9/1999, misfill Prozac/Prilosec, \$250.00 CP); (7/1997, refuse to fill, dismiss).

Recommendation: Consent Order with a \$500.00 civil penalty and a directive to take a course in preventing medication errors within ninety (90) days of signing the Consent Order.

Dr. Robert Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Sheila Mitchell. **The Board requested proof to be furnished relative to the course taken.** All were in favor and the motion carried.

3. Case No.: L03-PHR-RBS-2004188371

The Complainant, a Rheumatoid Arthritis (RA) sufferer, alleges that the pharmacy refused to refill his prescription for Hydrocodone/APAP three (3) days early causing him to suffer unnecessarily from the RA. The Complainant also alleges that the pharmacy refused to return the original prescription and that the technician was "arrogant". One of the pharmacists on staff that day says that although he had no contact with the Complainant, it is the pharmacy policy not to refill until the due date. The dispensing pharmacist (floater) states that she did refuse to refill the prescription 3 days early because she did not want to violate pharmacy policy and another pharmacist refusal to refill the prescription on the previous day. Upon further review, the DPh did refill the prescription that same day because the Complainant was a long term patient with no history of abuse/misuse. After the DPh ultimately refilled the prescription, she did not realize that a new prescription was brought in the day before.

*Previous complaints: DPh (JF): None
DPh (DW): None*

Technician: None

Pharmacy: None

Recommendation: Dismiss

Mrs. Monica Franklin motioned to **accept counsel's recommendation**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

4. Case No.: L04-PHR-RBS-2004190231

The Complainant, a dentist, alleges that two pharmacists refused to fill an emergency prescription for Percocet 10/650 because they questioned the validity of the prescription without verifying the prescription with the prescriber. A floater pharmacist (BC) and regularly scheduled pharmacist (JB) were involved in this incident. JB says that before she left the pharmacy she received the phoned-in prescription for Percocet and Augmentin from the dentist. She asked the dentist if it was an emergency and he confirmed that it was. The dentist offered to fax the prescription as well, but JB declined. JB claims that she then became suspicious about a forgery because the dentist said he was exhausted from dealing with this matter because he had spent the better part of the "last hour" trying to find a pharmacy that was open. At that time, BC came in to the pharmacy and JB told BC in reference to the prescription, "I wouldn't fill it". BC searched the pharmacy records; however, neither the patient nor the dentist were on file. As BC attempted to explain to the patient that they needed a hard copy of the prescription and that they were reluctant to fill it, he told the patient that he could call the dentist to talk about alternative pain management, but the patient did not want to do that. The dentist called the pharmacy back and told BC to fill the prescription.

Previous complaints: DPh (JB): None

DPh (BC): None

Pharmacy: None

Recommendation: Letter of Warning to DPh (JB) and Dismissal for DPh (BC)

Dr. Sheila Mitchell motioned to **dismiss the complaint for both pharmacists involved**; seconded by Dr. Forrest Parmley. There were six (6) Ayes and one (1) Nay. The motion carried.

5. Case No.: L04-PHR-RBS-200491751

The Complainant is a physician who alleges that the pharmacy has been using his DEA number under another physician's name. A key punch error caused the pharmacy to inadvertently have the incorrect DEA number associated with the Complainant. The error was corrected and both the physician and insurance carrier were informed of the error and correction.

Previous complaints: DPh: (1/1999, misfill, informal)

Pharmacy: None

Recommendation: Dismissal

Dr. Reggie Dilliard motioned to **accept counsel's recommendation**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

6. Case No.: L04-PHR-RBS-2004192611

The Complainant alleges that her prescription for Ampicillin 500 mg was erroneously filled with Amoxicillin 500 mg. The Complainant states that she did not consume any of the incorrect medication

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and that her mother, who picked up the prescription was not offered any information about the prescription, indicating a lack of patient counseling. The Complainant realized the error in the drive thru and went right back into pharmacy and questioned the difference in medications. The DPh responded that at the time he filled the prescription, he was out of Ampicillin and he made the decision, without authorization from the physician, to substitute Amoxicillin because he determined the drugs to be therapeutically equivalent. The DPh further states that he was unable read the prescriber's name and therefore could not have even asked for permission to substitute. The DPh did not state whether patient counseling was offered.

Previous complaints: DPh (6/2000, refill w/o permission, letter of reprimand, \$750.00 CP)

Pharmacy: (6/2000, refill w/o permission, letter of reprimand, \$750.00 CP)

Recommendation: Consent Order with a \$250.00 civil penalty for failure to counsel and Letter of Warning for the substitution without permission.

Dr. Robert Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

7. Case No.: L04-PHR-RBS-2004193081

The Complainant alleges that her prescriptions for Lasix, Micro-K and Inderal were all written "dispense as written", were illegally substituted with generics. The pharmacist states that the original prescriptions were written as "dispense as written" and properly filled. Before the refills were due, the prescriber was contacted and gave permission to substitute and this contact was documented by the pharmacist. The Complainant was informed of this; however, she refused to accept it. The pharmacy then offered to dispense the brand name prescriptions, but the Complainant left the pharmacy without the medication and the prescriptions were never filled by the pharmacy at all.

Previous complaints: DPh: None

Pharmacy: (11/99, misfill, LOI; 7/2000, refuse to fill, dismiss)

Recommendation: Dismiss

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

8. Case No.: L04-PHR-RBS-2004193391

The Complainant states that the pharmacist refused to fill her prescriptions (neither the Complainant nor the DPh states what the prescriptions were for), that the DPh was rude and informed the Complainant not to come back to the pharmacy in the future. The DPh states that the Complainant began to ask for early refills. Upon performing a DUR, the DPh realized that the Complainant had prescriptions for several drugs in the same class. The DPh then called the Complainant's physician to determine what medications she should be taking. The physician requested that the pharmacist remove refills on some that should have been discontinued at his request. When the DPh conveyed this to the Complainant, the DPh states that she became hostile, yet still continued to call a few days thereafter for refills and would curse at the DPh. The DPh told the Complainant not to come in the pharmacy anymore.

Previous complaints: DPh: (11/02, gave Rx to wrong person, LOI to review procedure with staff).

Pharmacy: None

Recommendation: Dismiss

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Dr. Julie Frazier motioned to **accept counsel's recommendation**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

9. Case No.: L04-PHR-RBS-2004196021

This anonymous Complainant alleges that the Respondent has been known to distribute drugs to friends as well as family. An investigation was conducted by having the investigator interview the supervisors at two places where the Respondent worked as a relief pharmacist. The investigator reports that neither of the supervisors had any knowledge or suspicions that the DPh was engaged in any illegal activity.

Previous complaints: None

Recommendation: Dismiss

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

10. Case No.: L04-PHR-RBS-2004195271

The complaint alleges that the Respondent, who is a registered technician, was fired and arrested for diverting controlled substances from her employer. Loss Prevention found 200+ Hydrocodone and Xanax pills in her locker. The technician admitted to the theft for personal use and also selling some to a friend.

Recommendation: Formal Hearing

Dr. Sheila Mitchell motioned for the **surrender of license/formal hearing**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

11. Case No.: L04-PHR-RBS-2004192041

The complaint alleges that the Respondent, who is a registered technician, was fired for forging or telephoning in four (4) forged prescriptions for Hydrocodone Cough Syrup for her boyfriend. She made hard copies of the prescriptions to keep in file and the log shows that she picked up two (2) of the prescriptions. We have an affidavit from the prescribing physician stating that he did not authorize the prescriptions.

Recommendation: Formal Hearing

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

12. Case No.: L04-PHR-RBS-2004180231

This complaint was previously presented to the Board and the Board voted to dismiss the complaint; however, the Complainant wanted us to investigate the matter further.

To refresh your recollection, the Complainant alleges that the DPh (PIC) substituted generic Glipizide ER 10 mg for Glucotrol XL 10 mg without authorization from the physician. The Complainant claims that before she left the pharmacy, she told the DPh (PIC) that she did not want to take the generic because it would not work. The Complainant states that the pharmacist told her it was the same medicine and to take it home and try it. The Complainant claims that she consumed the generic medication for approximately five (5) days and she experienced an increase in her glucose levels.

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When the Complainant requested the brand name drug, she claims that the pharmacist purposely delayed clearing her insurance records which caused the Complainant to wait an unusually long amount of time to get the brand name drug at another pharmacy.

The DPh (PIC) states that the prescription was phoned in and there was no notation that the physician requested the brand name product. The pharmacist states that she informed the Complainant that she filled the prescription with the generic and obtained the Complainant's approval for the substitution. The pharmacist also states that she counseled the Complainant about the generic and told her to try it and if she was dissatisfied, she could bring it back in exchange for the brand name. The pharmacist also states that any delay in clearing the insurance records was inadvertent and the result of the Complainant's decision to change pharmacies.

After the Board voted to dismiss the complaint, the Complainant produced a letter from her physician stating that his records contained no request to substitute Glucotrol XL to the generic. Our investigation revealed that the technician contacted the physician's office by phone for authorization to refill the prescription at which time the technician also requested permission to substitute the generic. The technician states that the physician's office left a voice mail message authorizing the refill and made no reference or objection to the use of the generic. Our investigator also spoke to a nurse at the physician's office who states that it was the office's standard operating procedure to allow for generic substitution. Also, the pharmacy had a request on file from the Complainant to substitute generic for brand name medications and the Complainant was taking other generic medications in substitution of the brand name.

Previous complaints: PIC- None

Pharmacy- 12/98, wrong directions, dismiss; 1/01, expired drug, LOI to PIC; 9/02, misfill, dismiss)

Recommendation: Affirm previous vote

Dr. Sheila Mitchell motioned to **accept counsel's recommendation**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

13. Case No.: L04-PHR-RBS-2004184661

The complaint alleges that the pharmacist has been dispensing controlled substances without a prescription. An investigation to this matter revealed that there was a surplus of Diazepam, Valium, Lortab, Norco, and Vicodin. Most significantly, there was a shortage of approximately 43,000 units of Hydrocodone 5/500, 111,000 units of Hydrocodone 75/500, approximately 15,000 units of Hydrocodone 10/500, approximately 15,000 units of Hydrocodone 7.5/650 and 62,000 units of Hydrocodone 10/650.

Recommendation: Formal Hearing

Dr. Julie Frazier motioned to **accept counsel's recommendation**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

14. Case No.: L04-PHR-RBS-2004187771

I previously presented this complaint and recommended a Consent Order with a \$1,000 civil penalty. I would like to re-review this complaint with some new information.

To refresh your recollection, the complaint alleges that the Respondent altered five (5) prescriptions written for Pentazocine from 9/23/03 to 1/30/04 by changing the amount prescribed from 40 tablets to

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240 tablets. The prescriber stated in an affidavit that the quantities dispensed on the prescriptions were not the quantities authorized. The Respondent later admitted to altering the prescriptions. The Respondent also submitted to substance abuse evaluation which could not be completed because of the Respondent's medical condition which required pain medication. However, the Respondent was referred to an OB/GYN physician for a medical assessment and later to a hospital-based pain control practice and there was not indication of chemical impairment.

While I thought that the prescriptions were intentionally altered by the Respondent, our investigator indicated that based on his conversations with the Respondent and the Respondent's physician there is reason to believe otherwise. All of the prescriptions that were the subject of this complaint were phoned in and the Respondent claims that she misunderstood the tablet amount to be 240 instead of 40. When the investigator spoke to the Respondent's physician, the physician indicated that it could have been a misunderstanding.

Prior complaints: None

Recommendation: Rescind prior vote and authorize a Letter of Warning.

Dr. Sheila Mitchell motioned to accept counsel's recommendation. The motion failed for lack of a second. Dr. Reggie Dilliard motioned to **accept counsel's recommendation**; seconded by Dr. Robert Mitchell. Dr. Dilliard stated the pharmacist should not fill any of her own prescriptions. All were in favor and the motion carried.

DIRECTOR'S REPORT

2005 BOARD OF PHARMACY CALENDAR

January	18 - 19 17	Board Meeting <i>Martin Luther King, Jr. (Holiday)</i>
February	5 - 6 19 - 20 21	<i>Jackson Update Seminar</i> <i>TPA Midyear Meeting</i> <i>Knoxville Update Seminar</i> <i>President's Day (Holiday)</i>
March	5 - 6 12 - 13 15 - 16 25	<i>Chattanooga Update Seminar</i> <i>Johnson City Update Seminar</i> Board Meeting <i>Good Friday (Holiday)</i>
April	2 - 3 9 - 10 23 - 24	<i>Cookeville Update Seminar</i> <i>Memphis Update Seminar</i> <i>Nashville Update Seminar</i>
May	 17 - 18 21 - 24 31	<i>FWS Meeting - Paris Landing</i> Board Meeting <i>NABP</i> <i>Memorial Day (Holiday)</i>
July	4 12 - 13 18 - 21	<i>Independence Day (Holiday)</i> Board Meeting <i>TPA Convention</i>
August	7- 9	<i>District III-Knoxville</i>

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September	5 20 - 21	Labor Day (Holiday) Board Meeting
October		MALTAGON Tripartite
November	8 11 15 - 16 24 - 25	Election Day Veteran's Day (Holiday) Board Meeting Thanksgiving (Holiday)
December	25	Christmas (Holiday)

THE MEDICATION ERROR REDUCTION ACT 2004

The Legislature passed The Medication Error Reduction Act of 2004, Public Chapter 678, relative to the legibility of prescriptions issued by health care providers, which goes into effect on July 1, 2004. The legislative intent is to promote medical safety for all patients who are issued drug prescriptions in this state. The new law allows for the prescription to be electronic, written or typed. The Board of Pharmacy and the Department of Health will have the authority to promulgate rules on this law.

BOARD OF PHARMACY - RULEMAKING HEARING SEPTEMBER 21, 2004

The Tennessee Board of Pharmacy will conduct a rulemaking hearing on Tuesday, September 21, 2004 at 9:00 a.m., CDT at the Davy Crockett Tower, 500 James Robertson Parkway, Room 160, Nashville, Tennessee to consider the promulgation of amendments to the rules and new rules.

GENERIC SUBSTITUTION

Director Kendall Lynch stated a letter dated June 23, 2004, from Sandez, a manufacturer, noted that their new generic L - thyroxine was "AB" rated. Per Tennessee Code Annotated §53-10-203 and §53-10-204, if the drug is "A" rated, it can be substituted. Dr. Reggie Dilliard motioned it is the **consensus of the Board of Pharmacy to support the opinion of legal counsel**; seconded by Dr. Julie Frazier. All were in favor and the motion carried.

July 14 – 15, 2004

DEA – CERTIFIED TECHNICIANS

RECEIVE/TRANSFER OF PRESCRIPTIONS FOR CONTROLLED SUBSTANCES

Director Kendall Lynch stated in October, 2000, a letter was addressed to Ms. Patricia Good with the Drug Enforcement Administration regarding Board of Pharmacy Rule 1140-2-.02 (3) relevant to certified pharmacy technicians receiving new or transferred oral medical and prescription orders for controlled substances. This Board's rule conflicts with DEA rules. DEA states only pharmacists may handle. Director Lynch questioned whether a supervising pharmacist can delegate this task. The Code of Federal Regulations defines the term pharmacist as any pharmacist licensed by a State to dispense controlled substances, and shall include any other person (e.g., pharmacist intern) authorized by a State to dispense controlled substances under the supervision of a pharmacist licensed by such State. Ms. Patricia Good, Director Kendall Lynch, and legal counsel, Mrs. Alison Cleaves are in agreement that certified pharmacy technicians can perform those tasks.

TRIPARITE MEETING - OCTOBER 21 – 22, 2004

Director Kendall Lynch suggested the following discussion topics for the Triparite Meeting to be held on October 21 – 22, 2004; Controlled Substance Data Base Monitoring, Public Chapter 678 - "Medication Error Reductions Act of 2004"; and Pharmacy Technician Schools.

MALTAGON CONFERENCE 2004

NEW ORLEANS, LA

OCTOBER 17 – 20, 2004

Director Kendall Lynch stated Dr. Robert Mitchell will not be able to attend the MALTAGON Conference, which is to be held on October 17 – 20, 2004 at the Inn on Bourbon Hotel, in New Orleans, Louisiana. Dr. Sheila Mitchell will attend the meeting.

DISTRICT III MEETING

BILOXI, MS

AUGUST 1 – 3, 2004

Director Kendall Lynch and Dr. Robert Mitchell will attend the District III Meeting to be held on August 1 - 3, 2004, in Biloxi, Mississippi.

BOARD OF PHARMACY RULE 1140-1-.14 (5)

The Tennessee Department of Health, Division of Oral Health Services is interested in Sodium Fluoride Varnish 5% being placed on the drug listing that can be dispensed by the health departments under Rule 1140-1-.14 (5). This change would require an amendment to the existing rule and a rule making hearing will be conducted.

UPDATE SEMINARS 2005

Dr. Glen Farr has suggested an addition of an 8th location site in Murfreesboro, Tennessee relevant to the Update Seminars for 2005. The addition of the site did not receive a favorable response. Please note the Board calendar for Update Seminars for 2005 on pages 16 & 17.

ARTHUR KONIALIAN, DPH DISCIPLINED IN ANOTHER STATE

Director Kendall Lynch stated Dr. Arthur Konialian has applied for reciprocity licensure and was disciplined for chemical dependency by the Pennsylvania Board of Pharmacy. Dr. Konialian has met the requirements established by the Pennsylvania Board of Pharmacy and has maintained sobriety since June 6, 1996. Dr. Reggie Dilliard motioned to **approve the procedure for licensure**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

CAROL PETERSEN, DPH DISCIPLINED IN ANOTHER STATE

Director Kendall Lynch advised the Board that Dr. Carol Petersen has applied for licensure by reciprocity and had been disciplined by the Wisconsin Board of Pharmacy. Dr. Petersen was disciplined for the manufacturing of progesterone instead of compounding. Dr. Petersen was assessed fines and reprimanded by the Wisconsin Board of Pharmacy. Dr. Robert Mitchell motioned to **approve with the application process**; seconded by Dr. Sheila Mitchell. All were in favor and the motion carried.

**RASHUNDA S. SCOTT – APPLICATION FOR PHARMACY TECHNICIAN
JACKSON, TN**

Director Kendall Lynch stated in 2003, Ms. Rashunda Scott was working at a pharmacy and admitted to theft of two (2) bottles of Hydrocodone for personal use and was terminated. On October 22, 2003, Ms. Scott's pharmacy technician was denied based on the information our office received from her employer. Ms. Scott has the right to appeal the decision pursuant to Tennessee Administrative Procedures Act. In May, 2004, Ms. Scott submitted a second application for pharmacy technician and was working at another pharmacy. Ms. Scott was advised of the previous action and on July 12, 2004, the office received a letter admitting to the wrongdoing. Dr Reggie Dilliard motioned to **deny the application but invite Ms. Scott to appear before the Board**; seconded by Dr. Robert Mitchell. All were in favor and the motion carried.

ADJOURNED

Dr. Julie Frazier motioned to adjourn the board meeting on Wednesday, July 14, 2004 at 4:30 p.m., CDT; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

RECONVENED

The Board of Pharmacy reconvened on Thursday, July 15, 2004, at 9:00 a.m., CDT in Room 160 of the Davy Crockett Tower. President Robert Shutt called the meeting to order. All members were present with the exception of Dr. Julie Frazier.

**STEVE LUBIN, DPH – REQUEST FOR REINSTATEMENT OF LICENSE
MEMPHIS, TN**

Dr. Steve Lubin appeared before the Board to request the reinstatement of his pharmacy license. Dr. Lubin was not represented by counsel. Director Kendall Lynch advised the Board that in March 1998, Dr. Lubin agreed to a civil settlement with the United States Government for two (2) counts of health care fraud with a penalty of \$225,000 and required to surrender his pharmacist/pharmacy licenses

and DEA Registration for a period of five (5) years. In March, 1998, Dr. Lubin became the subject of a HHS/OIG exclusion for ten (10) years. The exclusion is effective through March, 2008. The Board finalized the surrender of Dr. Lubin's pharmacist and pharmacy licenses in June, 1998. In January, 2001, Dr. Lubin entered a guilty plea to two (2) counts of health care fraud, was assessed a \$1,000 fine and placed on three years probation for violating the terms and conditions of the 1998 settlement. Dr. Lubin advised the Board everything has been satisfied except for the OIG waiver, and an application is in the process for obtaining the OIG waiver. Dr. Lubin stated he was refilling prescriptions for health care patients without authorization from the doctor and recordkeeping violations. The Board inquired if there had been any other issues brought before the Board of Pharmacy. Dr. Lubin replied in the middle 1970's, he allowed a student to fill prescriptions without supervision; in the middle 1980's, he allowed patients to purchase paregoric without completing proper documentation; and in 1995, he refilled prescriptions without authorization. Dr. Robert Shutt advised Dr. Lubin a pharmacist license is not given but a privilege to possess and it should be respected. After board discussion, Mrs. Monica Franklin motioned to **deny the request for the reinstatement of his pharmacy license**; seconded by Dr. Sheila Mitchell. Dr. Robert Mitchell recused himself. The motion carried.

**WILLIAM HAMILTON, DPH
PHILPOT, KY**

Mrs. Alison Cleaves, legal counsel, advised the Board in May, 2004, Dr. William Hamilton appeared before the Board without legal representation, where a formal hearing was conducted and resulted in the revocation of Dr. Hamilton's license for filling prescriptions without authorization from the doctor. Dr. Hamilton was mailed a Final Order. On June 3, 2004, legal counsel Mrs. Cleaves, received notice from Dr. Hamilton's legal counsel stating a petition for the temporary stay of the May 28, 2004 Order was being filed. Mrs. Cleaves stated pursuant to the Tennessee Administrative Procedures Act, §4-5-316 – Stay; a petition for stay of effectiveness of a final order may be submitted within seven (7) days

after its entry and the deadline was met. Mrs. Cleaves stated the evidence of the trial showed Dr. Hamilton admitted to filling prescriptions without authorization, which is enough to revoke the license regardless of the criminal charges. Dr. Robert Mitchell motioned to **deny the stay**; seconded by Mrs. Monica Franklin. All were in favor and the motion carried.

BOARD OF PHARMACY WEBSITE: <http://www.state.tn.us/commerce/boards/pharmacy>

Director Kendall Lynch invited the board members to visit the website and acknowledged the work efforts performed by Ms. Kolleen Jeffery. Ms. Jeffery initiated the Map Quest feature and applications are now able to be completed on-line and printed.

BOARD OF PHARMACY EMPLOYEE/LEGAL COUNSEL

Director Kendall Lynch informed the Board that two (2) of the pharmacy board's employees were recently married. Mrs. Martha Hogue Morrow and Mrs. Alison Zane Cleaves were recently united in blissful marriages in May and June, 2004. Congratulations!! The new e-mail addresses for these employees are:

Martha.morrow@state.tn.us
Alison.zane.cleaves@state.tn.us.

**M. FORREST PARMLEY, DPH
NASHVILLE, TN**

President Robert Shutt, on behalf of the Board, bid farewell to Dr. Forrest Parmley and expressed his appreciation for Dr. Parmley services. Director Kendall Lynch, on behalf of the office, thanked him for his thoughtfulness and tenure on the Board.

ADJOURNED

Mrs. Monica Franklin motioned to adjourn the Board of Pharmacy meeting on Thursday, July 15, 2004, at 10:40 a.m. CDT; seconded by Dr. Shelia Mitchell. All were in favor and the motion carried.

Respectfully submitted,

Robert Shutt, President

Kendall M. Lynch, Director